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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,140	02/22/2002	Thomas Wyss	Rovema Case 27	8515

7590

08/12/2003

FLYNN, THIEL, BOUTELL & TANIS, P.C.
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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

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DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/081,140

Applicant(s)

WYSS ET AL.

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9, 11, 12 is/are rejected.
- 7) ☒ Claim(s) 5, 10 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6, 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,3,4,9,11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberto et al (US 5,562,581) in view of Dietrich et al (US 4,197,790) and in further view of Taddei.

Roberto discloses the invention substantially as claimed including a magazine (not shown), removing device 7, gripping means 18, comprised of suction cups 19, forwarding conveyors 9 and 10, forming an expansion chamber, with lugs 15 arranged on conveyor 9 and lugs 8 arranged on conveyor 10 (see Figs. 2a, 2b, C3, L22-49 and C4, L5-7). What Roberto does not disclose is the use of a compressing section that partially opens the carton before introduction into the expansion chamber. However, Dietrich teaches that art is old and well known in the art to provide a box opening apparatus with a compressing section 5, comprised of a curved surface for opening a carton 2 before placement on forwarding conveyor 6 for the purpose of efficiently opening a box thereby increasing manufacturing throughput (see Fig. 1 and C2, L19-23). Furthermore, Taddei teaches that it is old and well known in the art to provide conveyor 10 and 11, with diagonally opposing lugs 19 and 20 moving at a similar velocity for the purpose of increasing manufacturing throughput (see Fig. 1 and C5,L60

– C6,L16). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Roberto with the conveying system as taught by Taddei for the purpose of increasing manufacturing throughput.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roberto et al in view of Dietrich et al and in further view of Guttinger et al (US 5,91,078).

Roberto and Dietrich disclose the invention substantially as claimed except for the use of planetary gearing to rotate the pickup members. However, Guttinger teaches that it is old and well known in the art to provide planetary gearing 70,72 and 74 for the purpose of allowing pick up members to move in cycloidal path thereby increasing manufacturing throughput (see Figs. 2,5-7,9,10 and C1, L28-33). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Roberto with the planetary gearing as taught by Guttinger for the purpose of increasing manufacturing throughput.

Allowable Subject Matter

4. Claims 5,10 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed 5/30/03 have been fully considered but they are not persuasive.

6. Applicant first argues that the primary reference of Roberto does not show the box in a partially open position and that it in fact teaches that the box is completely open. Furthermore, applicant relies on Column 6, lines 15 and 16 to show that the box is completely opened by roller 51. As the examiner interprets the disclosure in Column 6, Roberto discloses nothing about the box being in a completely open position. Lines 15 and 16 read "Opening of the case 2 is completed by the roller 51, that also helps the case 2 to engage the striker 53, if present". Roberto discloses nothing in the passage that would suggest that the box is in a fully open position, and only states that the opening operation is completed while not suggesting the state of openness of the box itself. Furthermore, in Figure 2a, the box is clearly in a position that is not fully opened, and only becomes fully opened when it is engaged with the bottom conveyor through the assistance of pusher blade 55. Still furthermore, the Examiner contends that the invention of Roberto would not be able to function if the box was opened in a fully opened manner since a fully opened box would not be able to pass through striker 53 without causing some sort of damage to the corners since the distance of the box from corner to corner on the same side exceeds the distance from the upper conveyor to the striker.

Applicant's second argument concerns the lack of motivation to incorporate the teaching of Dietrich into the primary reference of Roberto. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching of Dietrich is used to show applicant that it is old and well known in the art of box opening to utilize a compressing section that opens a box as the box is transported from a magazine to a conveying station through the use of a suction member attached to a cyclical device that moves the suction arm.

Applicant's third argument concerns the lack of motivation to incorporate the teaching of Guttinger into the primary reference of Roberto. Once again, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching of Guttinger is used to show applicant that it is old and well known in the art to utilize a transporting mechanism that is comprised of planetary gears and travels on a cycloidal path so that the carton can be transported from a magazine to another station. While Guttinger does not specifically disclose the device being use in carton opening, the examiner contends that the feeding mechanism of the applicant does not actually open the carton as this is being accomplished by the compressing section. The examiner further contends that there is sufficient motivation to incorporate the feeding unit of Guttinger into the primary reference of Roberto.

Therefore, for the reasons indicated above, the rejection is deemed proper.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 703-305-4962. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Paul Durand
August 5, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700